

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/22/2023

In re:

03-MD-01570 (GBD)(SN)

**TERRORIST ATTACKS ON  
SEPTEMBER 11, 2001**

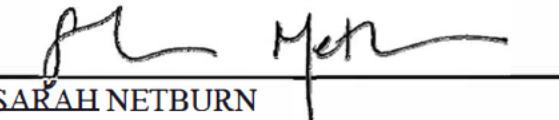
**ORDER**

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**SARAH NETBURN, United States Magistrate Judge:**

As discussed in the September 6, 2023 conference, the Court has developed draft materials for use in connection with default judgment motions. The attached materials include a proposed checklist, cover sheet, and set of tables. (Counsel can also request a copy of the underlying Excel file by emailing Netburn [NYSDChambers@nysd.uscourts.gov](mailto:NYSDChambers@nysd.uscourts.gov).) Counsel should review these materials and file any comments, suggestions, or questions by October 6, 2023. The Court will consider these responses as it finalizes these materials and any new instructions for filing default judgment motions.

**SO ORDERED.**

  
\_\_\_\_\_  
**SARAH NETBURN**  
United States Magistrate Judge

DATED: September 22, 2023  
New York, New York

## DEFAULT JUDGMENT CHECKLIST

Please verify that the following have been addressed before filing a motion for default judgment.

### QUALITY CONTROL MEASURES:

- Read SDNY Local Civil Rules 55.1 and 55.2 related to default judgment motions.
- Read SDNY ECF Rules 16.1–16.4 related to default judgment motions.
- Read Judge Daniels's and Judge Netburn's Individual Rules governing motions.
- Review case management orders governing default judgment motions filed in the MDL, including ECF Nos. 3362, 3435 (adopting measures described in ECF No. 3433), 7870, 7963, 8198.

Implement internal and inter-firm quality control measures.

- Verify that the firm represents each moving plaintiff.
- Verify that each plaintiff has a claim against the relevant defendant.
- Confirm each plaintiff's name, current address, and status (i.e. living or deceased).
- Promptly share information with the Plaintiffs' Executive Committees' ("PECs") default judgment clearinghouse in the manner requested by the PECs.
- Check motion against the PECs' default judgment motion master list.

### MOTION:

- Prepare a separate default judgment motion for each set of plaintiffs that requires significant analysis based on the type of analysis required.  
*E.g., Motion I – new personal injury claims; Motion II – non-US nationals with state law claims; Motion III – estate, solatium, and personal injury plaintiffs with prior judgments.*
- Address any new legal or factual issues in the memorandum of law, using headers to denote plaintiff-specific arguments.

### DECLARATION & EXHIBITS:

Include in declaration:

- Statement attesting to compliance with quality control measures discussed in ECF Nos. 3433, 3435.
- Statement attesting that moving plaintiffs have not previously received and do not have pending motions requesting judgments against these defendants in the MDL.

Append pertinent evidence, organized by plaintiff, addressing case-specific issues for motions requesting new:

- Functional equivalence findings
- Personal injury awards
- Latent injury awards
- Economic damages (file under seal)

**PROPOSED ORDER:**

Review text of proposed order.

- Omit requests for punitive damages. See ECF No. 3362. Language preserving the right to apply for punitive damages later is permitted.
- Use correct pre-judgment interest rate, see ECF No. 3362 (4.96 percent), and specify the date from which interest accrues.
- Identify all dockets on which the motion was filed.  
*E.g. The Clerk of Court is respectfully directed to terminate the motions in No. 03-md-01570 at ECF No. 1111, No. 12-cv-34567 at ECF No. 12, and No. 13-cv-98765 at ECF No. 19.*

Prepare tables listing requested judgments.

- Use the **Standardized Exhibits** Excel file provided by the Court.
- Read and follow directions captured in the “General Instructions” and “Field Key” sheets.
- Check that:
  - Each claimant/personal representative was properly added to the case.
  - Each claimant/personal representative is associated with the correct decedent.
  - The relationship between the claimant and decedent is listed correctly.
  - The claimant’s/decedent’s nationalities are listed correctly.
  - The 9/11 Attack site relevant to each claim is listed correctly.
  - The decedent’s date of death is listed correctly.
- Review damages listed for each plaintiff to ensure that:
  - Estate plaintiffs’ requests for pain and suffering damages are consistent with ECF No. 2618.
  - Solatium plaintiffs’ requests for damages are consistent with the amounts determined in ECF No. 3363 for the listed relationship.
  - Plaintiffs’ requests for economic damages are consistent with attached or previously filed reports.
  - Damages are trebled only where available.
- If moving plaintiffs have received judgments against other defendants in the MDL, verify that:
  - This motion requests awards consistent with previous judgments;
  - OR
  - Any deviations from prior judgments are addressed in the papers.
- Email Excel file with all tables to [Netburn\\_NYSDChambers@nysd.uscourts.gov](mailto:Netburn_NYSDChambers@nysd.uscourts.gov).

After all other materials are finalized, prepare the proposed order for filing.

- Complete **Default Judgment Cover Sheet** and attach to proposed order as Exhibit A.
- Attach the tables to the proposed order, starting with Exhibit B.

**DEFAULT JUDGMENT MOTION COVER SHEET**  
[SAMPLE]

**MOVING PAPERS:**

Please list MDL docket entries for the following filings.

Motion: ECF No. 9111

Memorandum of law: ECF No. 9112

Declaration & supporting exhibits: ECF No. 9113

**DEFENDANTS:**

Please list all defendants against which the plaintiffs are moving for default judgments:

The Taliban

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**PLAINTIFFS:**

Please describe each set of plaintiffs requesting judgments in this motion. Specify the exhibit to the proposed order in which those plaintiffs' claims are listed, a description of the plaintiffs, and the causes of action under which those plaintiffs are seeking relief.

Exh. B – US-national estate plaintiffs – ATA, 18 U.S.C. § 2333

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Exh. C – US-national solatium plaintiffs – ATA, 18 U.S.C. § 2333

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Exh. D – US-national personal injury plaintiffs with prior judgments – ATA, 18 U.S.C. § 2333

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**COMPLAINTS:**

Please list docket entries for all operative complaints cited in the attached exhibits listing plaintiffs' requested judgments:

No. 12-cv-34567 at ECF No. 1

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No. 13-cv-98765 at ECF No. 1

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**NOTICES OF AMENDMENT & SUBSTITUTIONS:**

Please list docket entries for all notices of amendment and substitutions relevant to this motion. If a substitution order incorporates by reference but does not reproduce a list of parties to be substituted, please also list the docket entry at which the list appears.

ECF Nos. 8876, 8877

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No. 12-cv-34567, ECF Nos. 2, 3

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No. 13-cv-98765, ECF Nos. 4, 11, 15

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**SERVICE:**

Order granting alternative service (if applicable): ECF No. 1990

Affidavit(s) of service: No. 12-cv-34567, ECF No. 7; No. 13-cv-98765, ECF No. 17

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Clerk's certificate(s) of default: No. 12-cv-34567, ECF No. 8; No. 13-cv-98765, ECF No. 18

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**SUBJECT MATTER JURISDICTION:**

Please check one.

The Court previously addressed subject matter jurisdiction over these claims in ECF No. 5994  
 The Court has not previously addressed subject matter jurisdiction over these claims.

**PERSONAL JURISDICTION:**

Please check one.

The Court previously addressed personal jurisdiction over these defendants in ECF No. 5994  
 The Court has not addressed personal jurisdiction over these defendants.

**LIABILITY:**

Please check one.

These plaintiffs previously received default judgments as to liability against the relevant defendant. Those judgments are available at docket entries: \_\_\_\_\_  
 This motion requests default judgments as to liability.

**FACTUAL & LEGAL QUESTIONS:**

Please check.

This motion requests  new functional equivalence findings;  new personal injury assessments; or  resolution of a new issue: \_\_\_\_\_  
 This motion does not raise substantial new factual or legal issues.

**COMPLIANCE:**

As stated in ECF No. 9113 at ¶ 7, counsel followed the quality control measures outlined in ECF No. 3433 and adopted in ECF No. 3435.

As stated in ECF No. 9113 at ¶ 8, these plaintiffs have not previously received judgments against these defendants.

Excel versions of any tables attached to the proposed order were emailed to [Netburn\\_NYSDChambers@nysd.uscourts.gov](mailto:Netburn_NYSDChambers@nysd.uscourts.gov) on 9 / 15 / 2023.

## STANDARDIZED EXHIBITS

## GENERAL INSTRUCTIONS

<b>Use a separate Excel file for each motion and use a separate table for each distinct group of plaintiffs</b>	<p>First, identify and prepare a separate default judgment motion for any set of plaintiffs that requires significant analysis:</p> <ul style="list-style-type: none"> <li>-- Plaintiffs requesting personal injury awards for the first time</li> <li>-- Plaintiffs requesting functional equivalence findings for the first time</li> <li>-- Plaintiffs moving under causes of action or legal theories the Court has not previously addressed.</li> </ul> <p>Second, within a single motion, three broad groups of plaintiffs should always be listed in separate tables:</p> <ol style="list-style-type: none"> <li>1 estates of people killed in the 9/11 Attacks ("estate plaintiffs" asserting "estate claims");</li> <li>2 family members ("solatium plaintiffs" asserting "solatium claims"); and</li> <li>3 people who were injured or suffered from environmental exposures ("personal/latent injury plaintiffs" asserting "personal/latent injury claims").</li> </ol> <p>Third, these three groups of plaintiffs should be further separated if members of any group are pursuing different legal theories.</p> <p>To illustrate, consider a firm that represents estate, solatium, and personal injury plaintiffs (many of whom have default judgments against Iran) who want to move for default judgments against the Taliban. Some of the solatium plaintiffs are non-US nationals moving under New York state law; the remaining plaintiffs are moving under the Anti-Terrorism Act ("ATA"). The firm would need to separate into different motions: (1) the personal injury plaintiffs who <i>do not</i> have default judgments against Iran, because their injuries need to be evaluated on an individualized basis; and (2) the solatium plaintiffs moving under New York law, because the Court has not previously addressed that cause of action. The remaining plaintiffs could be included in a single motion but separated into three tables.</p>
<b>Use the appropriate tables and consult the "Field Key" sheets</b>	<p><b>Motion I: Personal injury plaintiffs without Iran default judgments</b></p> <ol style="list-style-type: none"> <li>1 Personal Injury Plaintiffs (US nationals - ATA)</li> </ol> <p><b>Motion II: Non-US national solatium plaintiffs asserting Pennsylvania IIED claims</b></p> <ol style="list-style-type: none"> <li>1 Solatium Plaintiffs (non-US nationals - NY IIED)</li> </ol> <p><b>Motion III: Everyone else</b></p> <ol style="list-style-type: none"> <li>1 Estate Plaintiffs (US nationals - ATA)</li> <li>2 Solatium Plaintiffs (US nationals - ATA)</li> <li>3 Personal Injury Plaintiffs with Iran Default Judgments (US nationals - ATA)</li> </ol>
<b>Use conventions for referencing docket entries</b>	<p>Cells shaded blue call for docket entries. Docket entries should be listed according to the following rules:</p> <ol style="list-style-type: none"> <li>1 MDL docket entries are preferred and should not be preceded by a case number (i.e. "7770" refers to No. 03-md-01570 at ECF No. 7770);</li> <li>2 all other docket entries should be preceded by a case number (i.e. "12cv34567, 3" refers to No. 12-cv-34567 at ECF No. 3);</li> <li>3 use a comma to separate entries from the same docket and a semicolon to separate entries from different dockets (e.g. "7769, 7770; 12cv34567, 3, 5; 13cv98765, 1");</li> <li>4 exhibits should be indicated using the ECF exhibit number designation (e.g. "7770-1"); and</li> <li>5 when referring to a multi-page document (other than when referring to the entirety of an exhibit), include a pincite preceded by "at" (i.e. "7770 at 5" refers to ECF No. 7770 at pg. 5).</li> </ol>
<b>Prepare the tables for filing</b>	<p>Once the tables are completed, collapse any unused or irrelevant columns. If the plaintiffs are not seeking treble damages, <u>delete</u> the Treble Damages column.</p> <p>Sort the entries alphabetically by last name of the personal representative (for all estate tables) or the claimant (for all others).</p> <p>Adjust the sheet titles, headers, and footers to reflect the appropriate information.</p> <p>The "Estates," "Solatium," and "Personal &amp; Latent Injuries" sheets should be renamed to include any descriptive information relevant to the claims in that table (e.g. "Solatium - non-US nationals - NY IIED"). The header should automatically update with the sheet title, but counsel can manually add information to the header if necessary. The footer should include "Page X of X."</p> <p>Print each table to PDF. If possible, include all columns on the same page. Attach the PDF'd tables as exhibits to the proposed order.</p>
<b>Send electronic version to chambers</b>	Email the Excel sheet to Netburn_NYSDChambers@nysd.uscourts.gov.

Personal Representative				9/11 Decedent						Claim Information			Pain & Suffering Damages		Economic Damages				Total Damages				
First	Middle	Last	Suffix	First	Middle	Last	Suffix	Nationality on 9/11	Date of Death	9/11 Site	Case	Complaint	Amendments & Substitutions	Prior Award	Amount	Report	Date of Report	Prior Award	Amount	Compensatory	Treble	Notes	
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## FIELD KEY - ESTATES

Categories	Fields	Example	Explanation
		1	Include these numbers in the PDF'd versions of the exhibits to help identify individual claims.
Personal Representative	First	Sara	List the 9/11 Decedent's " <b>Personal Representative</b> "--the person appointed to administer their estate and the plaintiff for their claims.
	Middle	T.	
	Last	Hamasaki	
	Suffix		
9/11 Decedent	First	Noa	List the " <b>9/11 Decedent</b> "--the person killed in the 9/11 Attacks.
	Middle	S.	
	Last	Hamasaki	
	Suffix	Jr.	
	Nationality on 9/11	US	Use "US" for all United States nationals. Otherwise enter the name of the country of nationality, "other," or "unknown," as appropriate.
	Date of Death	9/11/2001	Record this date so the Court can distinguish between decedents killed on 9/11 and those who died months or years later.
	9/11 Site	NY	Select "NY", "PA," or "VA"
Claim Information	Case	12cv34567	Record the MDL member case that houses the plaintiff's claim.
	Complaint	12cv34567, 1 at 13	Identify the operative complaint that asserts a claim on behalf of the decedent. E.g., No. 12-cv-34567, ECF No. 1 at pg. 13 ("Noa S. Hamasaki III, individually and as personal representative of Noa S. Hamasaki Jr., and on behalf of all survivors, legally entitled beneficiaries, and family members of Noa S. Hamasaki Jr.").
	Amendments & Substitutions	8876 at 4, 8877	Identify any orders substituting personal representatives. If any order incorporates by reference a list of parties to be substituted, identify the docket entry at which the list appears. E.g., ECF Nos. 8876 at pg. 4 (moving to substitute Sara T. Hamasaki in place of Noa S. Hamasaki III as personal representative for Noa S. Hamasaki Jr.), 8877 (granting ECF No. 8876).
Pain & Suffering Damages	Prior Award	7370 at 8	Identify any prior judgments in favor of the claimant against other defendants.
	Amount	\$ 2,000,000.00	List the amount of pain and suffering damages requested.
Economic Damages	Report	7227-18	Identify any exhibits filed to support the economic damages valuation
	Date of Report	1/1/2019	List the date of the present value calculation in the exhibits filed to support the economic damages valuation. If the date of the present value calculation is unclear, use the date of the report.
	Prior Award	7370 at 8	Identify any prior judgments in favor of the claimant against other defendants.
	Amount	\$ 10,000,000.00	List the amount of economic damages requested.
Total Damages	Compensatory	\$ 12,000,000.00	Calculate total compensatory damages. *This field autopopulates using a formula.
	Treble	\$ 36,000,000.00	Calculate treble damages if appropriate. *This field autopopulates using a formula.
	Notes		Use the "Notes" column to explain or clarify any information.

Personal Representative				Claimant					9/11 Decedent						Claim Information			Solatiun Damages						
First	Middle	Last	Suffix	First	Middle	Last	Suffix	Nationality on 9/11	First	Middle	Last	Suffix	Nationality on 9/11	Date of Death	9/11 Site	Case	Complaint	Amendments & Substitutions	Relationship	Documentation	Prior Award	Amount	Treble	Notes
1																						\$	-	
2																						\$	-	
3																						\$	-	
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FIELD KEY - SOLATIUM			
Categories	Fields	Example	Explanation
		1	Include these numbers in the PDF'd versions of the exhibits to help identify individual claims.
Personal Representative	First	Devora	If the claimant is deceased, list their " <b>Personal Representative</b> "—the person appointed to administer their estate and the plaintiff for their claims.
	Middle	Eligia	
	Last	Elwyn-Ventura	
	Suffix		
Claimant	First	Andi	List the " <b>Claimant</b> "—the person who lost a family member in the 9/11 Attacks.
	Middle		
	Last	Elwyn-Ventura	
	Suffix		
	Nationality on 9/11	US	Use "US" for all United States nationals. Otherwise enter the name of the country of nationality, "other," or "unknown," as appropriate.
9/11 Decedent	First	Noa	List the " <b>9/11 Decedent</b> "—the claimant's family member who was killed in the Attacks.
	Middle	S.	
	Last	Hamasaki	
	Suffix	Jr.	
	Nationality on 9/11	US	Use "US" for all United States nationals. Otherwise enter the name of the country of nationality, "other," or "unknown," as appropriate.
	Date of Death	9/11/2001	Record this date so the Court can distinguish between claimants seeking damages for deaths on 9/11 and deaths months or years later.
	9/11 Site	NY	Select "NY", "PA," or "VA"
Claim Information	Case	12cv34567	Record the MDL member case that houses the plaintiff's claim.
	Complaint	12cv34567, 1 at 13	Identify the operative complaint that (1) asserts a claim in the claimant's name OR (2) asserts claims on behalf of the decedent's family through a representative. E.g., No. 12-cv-34567, ECF No. 1 at pg. 13 ("Noa S. Hamasaki III, individually and as personal representative of Noa S. Hamasaki Jr., and on behalf of all survivors, legally entitled beneficiaries, and family members of Noa S. Hamasaki Jr.").
	Amendments & Substitutions	12cv34567, 3; 8876 at 4, 8877	If the complaint does not name the claimant (option 2 above), identify the Notice of Amendment that does. If the claimant is deceased, identify the orders substituting personal representatives. If any order incorporates by reference a list of parties to be substituted, identify the docket entry at which the list appears. E.g., No. 12-cv-34567 at ECF No. 3 (Notice of Amendment naming "Andi Elwyn-Ventura"); No. 03-md-01570 at ECF Nos. 8876 at pg. 4 (motion requesting substitution of "Devora Eligia Elwyn-Ventura" as personal representative of "Andi Elwyn-Ventura"), 8877 (order granting ECF No. 8876).
Solatium Damages	Relationship	Stepchild	List the claimant's relationship to the 9/11 decedent.
	Documentation	7157-12	Identify any exhibits filed to support the claimant's relationship to the decedent.
	Prior Award	7370 at 16	Identify any prior judgments in favor of the claimant against other defendants.
	Amount	12,500,000.00	List the amount of solatium damages requested.
	Treble	37,500,000.00	Calculate treble damages if appropriate. *This field autopopulates using a formula.
	Notes	Claimant's last name was previously	Use the "Notes" column to explain or clarify any information.

Personal Representative				Claimant					Claim Information			Pain & Suffering Damages			Economic Damages			Total Damages				
First	Middle	Last	Suffix	First	Middle	Last	Suffix	Nationality on 9/11	9/11 Site	Case	Complaint	Amendments & Substitutions	Documentation	Prior Award	Amount	Report	Date of Report	Prior Award	Amount	Compensatory	Treble	Notes
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## FIELD KEY - PERSONAL &amp; LATENT INJURIES

Categories	Fields	Example	Explanation
		1	Include these numbers in the PDF'd versions of the exhibits to help identify individual claims.
Personal Representative	First		
	Middle		
	Last		If the claimant is deceased, list their " <b>Personal Representative</b> "--the person appointed to administer their estate and the plaintiff for their claims.
	Suffix		
Claimant	First	Madeline	
	Middle		List the " <b>Claimant</b> "--the person who suffered a personal or latent injury.
	Last	Lauffler	
	Suffix		
	Nationality on 9/11	US	Use "US" for all United States nationals. Otherwise enter the name of the country of nationality, "other," or "unknown," as appropriate.
	9/11 Site	VA	Select "NY," "PA," or "VA"
Claim Information	Case	13cv98765	Record the MDL member case that houses the plaintiff's claim.
	Complaint	13cv98765, 1 at 15	Identify the operative complaint that names the claimant. E.g., No. 13-cv-98765, ECF No. 1 at 15 ("Madeline Lauffler").
	Substitutions		If the claimant is deceased, identify the orders substituting personal representatives. If any order incorporates by reference a list of parties to be substituted, identify the docket entry at which the list appears.
Pain & Suffering Damages	Documentation	7388-6	Identify any exhibits filed to support the establish the injury's severity or causation.
	Prior Award	7401 at 4	Identify any prior judgments in favor of the claimant against other defendants.
	Amount	\$ 7,000,000.00	List the amount of pain and suffering damages requested.
Economic Damages	Report		Identify any exhibits filed to support the economic damages valuation.
	Date of Report		List the date of the present value calculation in the exhibits filed to support the economic damages valuation. If the date of the present value calculation is unclear, use the date of the report.
	Prior Award		Identify any prior judgments in favor of the claimant against other defendants
	Amount		List the amount of economic damages requested.
Total Damages	Compensatory	\$ 7,000,000.00	Calculate total compensatory damages. *This field autopopulates using a formula.
	Treble	\$ 21,000,000.00	Calculate treble damages if appropriate. *This field autopopulates using a formula.
	Notes		Use the "Notes" column to explain or clarify any information.